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DEVELOPMENT AUTHORITIES
THE BASICS

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"Seyfarth Shaw" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).

April 2022

GLOSSARY- DEFINITIONS

- Authority- includes a DA, a DDA and a JDA.
- CID = Community Improvement District
- Constitutional = created by an LCA
- DA = development authority
- DAL = the Development Authorities Law
- DDA = downtown development authority
- IGA = intergovernmental agreement
- JDA = joint development authority
- LCA = local constitutional amendment
- Local Government = city or county
- P3 = public/private partnership
- PILOTs = payments in lieu of taxes
- SSD = special service district; i.e., a special district that can levy special taxes or assessments
- Statutory = created under the Development Authorities Law or the Downtown Development Authorities Law
- TAD = tax allocation district
- TEBs = tax-exempt bonds

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THE BUILDING BLOCKS OF AUTHORITIES

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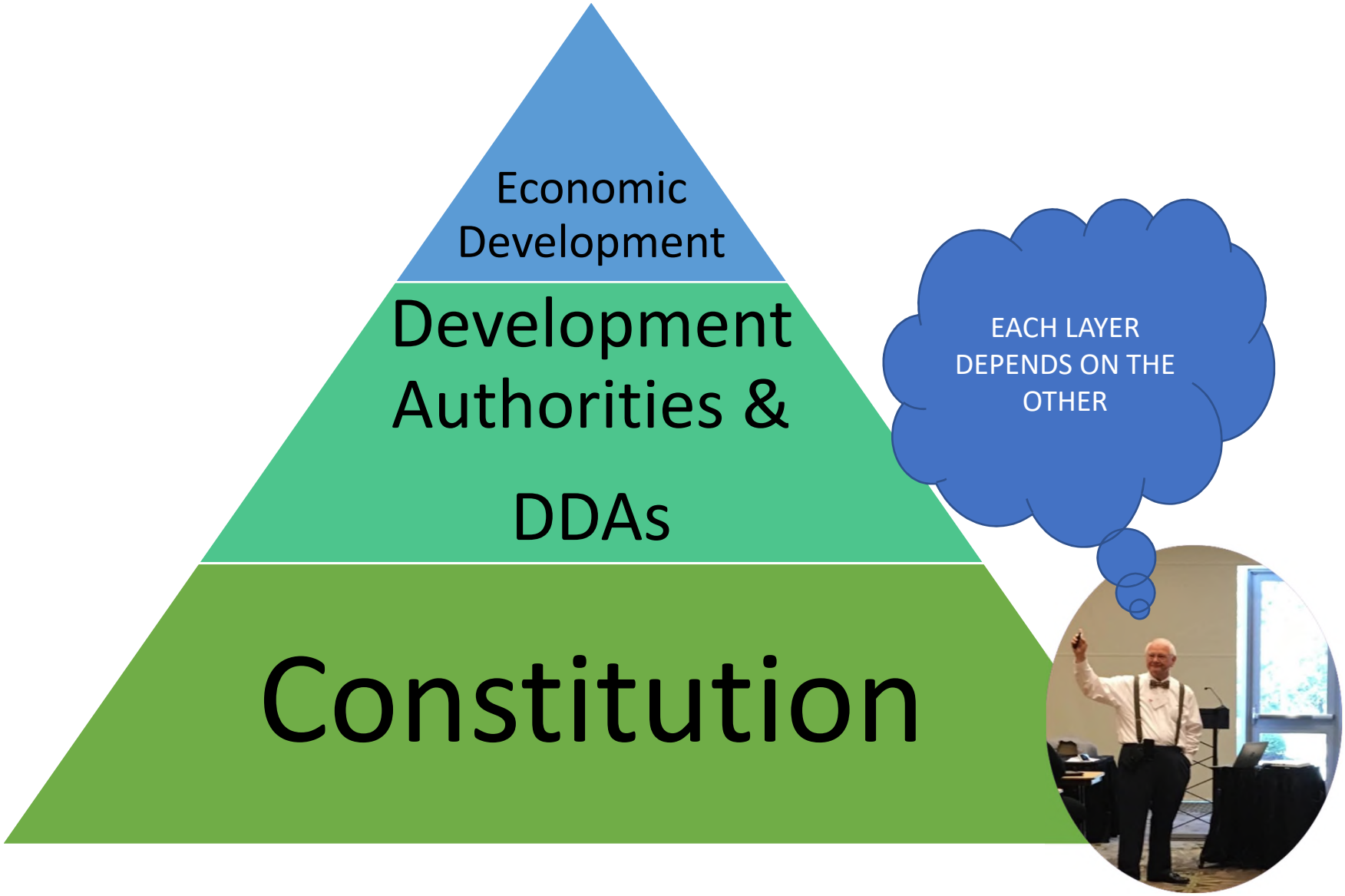

Economic Development
Development Authorities &
DDAs
Constitution
EACH LAYER DEPENDS ON THE OTHER

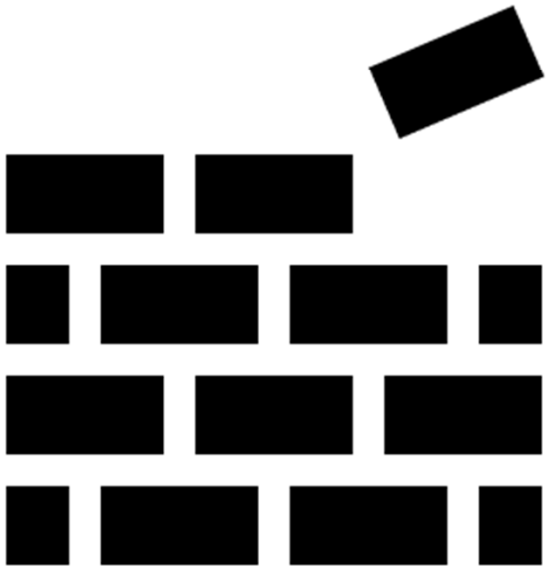
CREATION OF DEVELOPMENT AUTHORITIES AUTHORIZED.

Proposed Amendment to the Constitution.

No. 202 (House Resolution No. 399-912).

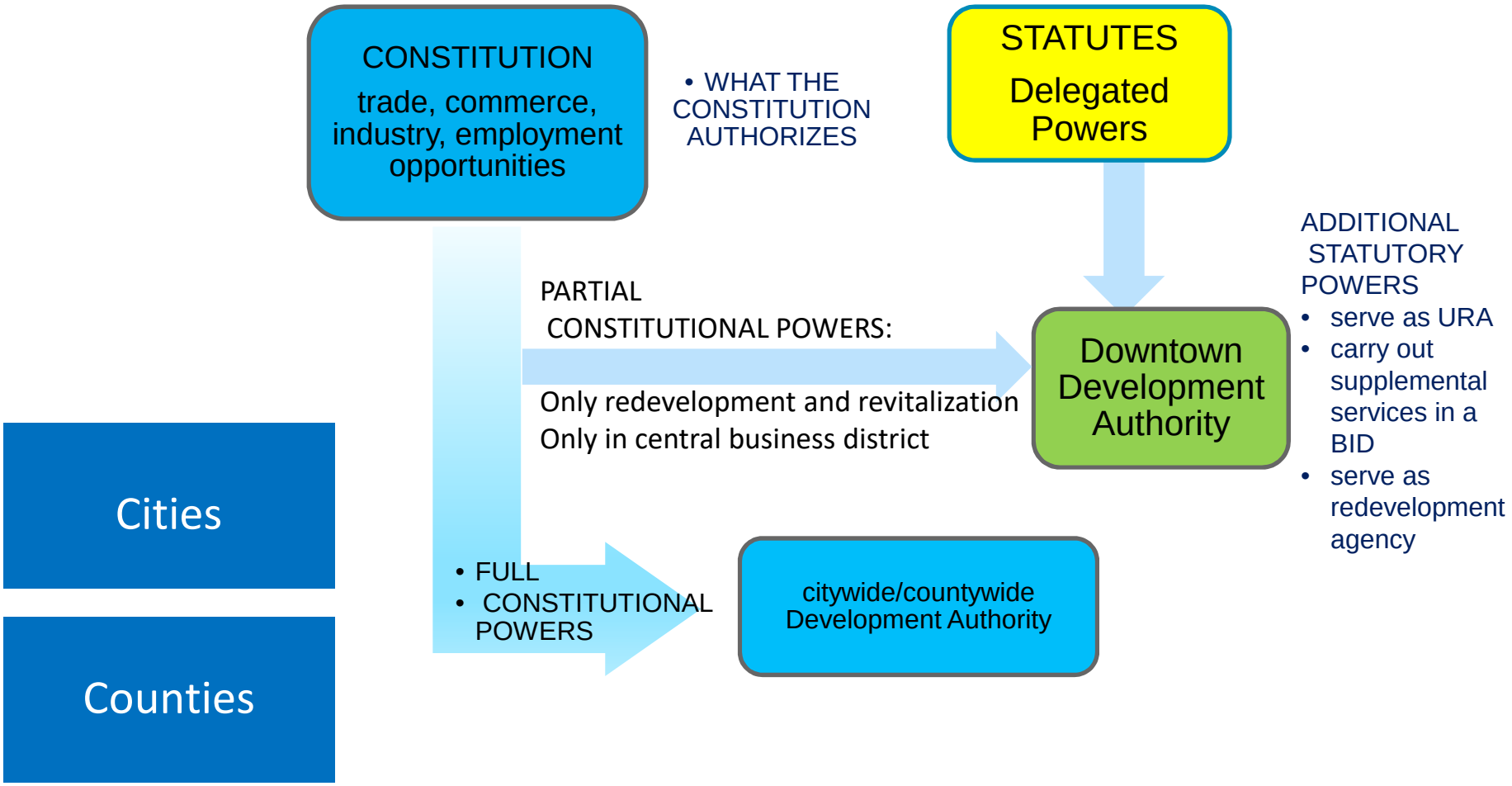
A Resolution.

Proposing an amendment to the Constitution so as to provide that the General Assembly may create Development Authorities or authorize any county or municipal corporation or combinations thereof to create Development Authorities and authorize such Authorities to issue revenue obligations for the purpose of developing industry, trade and employment opportunities; to provide for the submission of this amendment for ratification or rejection; and for other purposes.



TO COMPLETE THE FOUNDATION, THE CONSTITUTION HAD TO BE AMENDED TO AUTHORIZE AUTHORITIES.
THIS WAS DONE IN 1968.

THE CONSTITUTION ASSIGNS ECONOMIC DEVELOPMENT TO DEVELOPMENT AUTHORITIES AND DDAs



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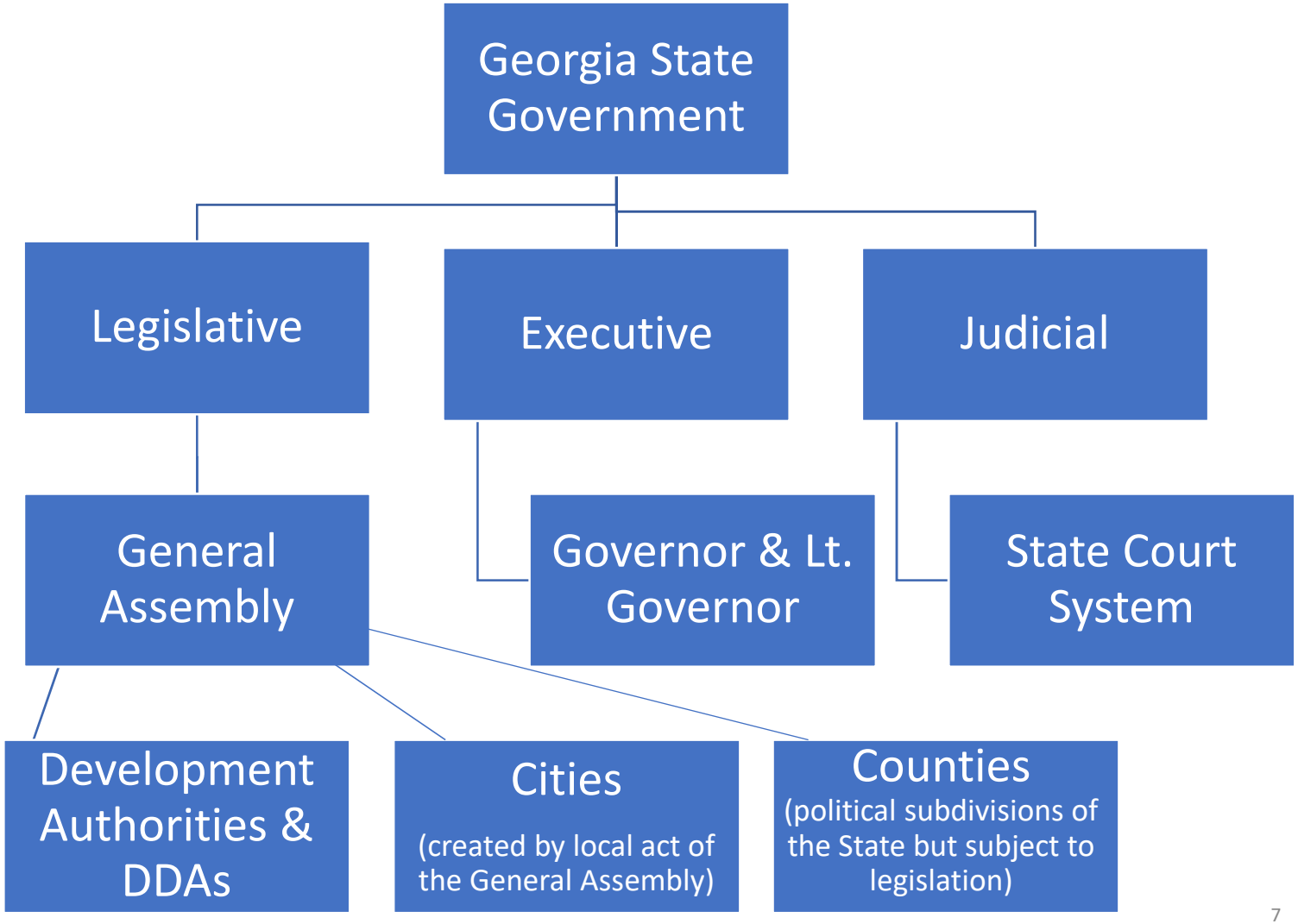
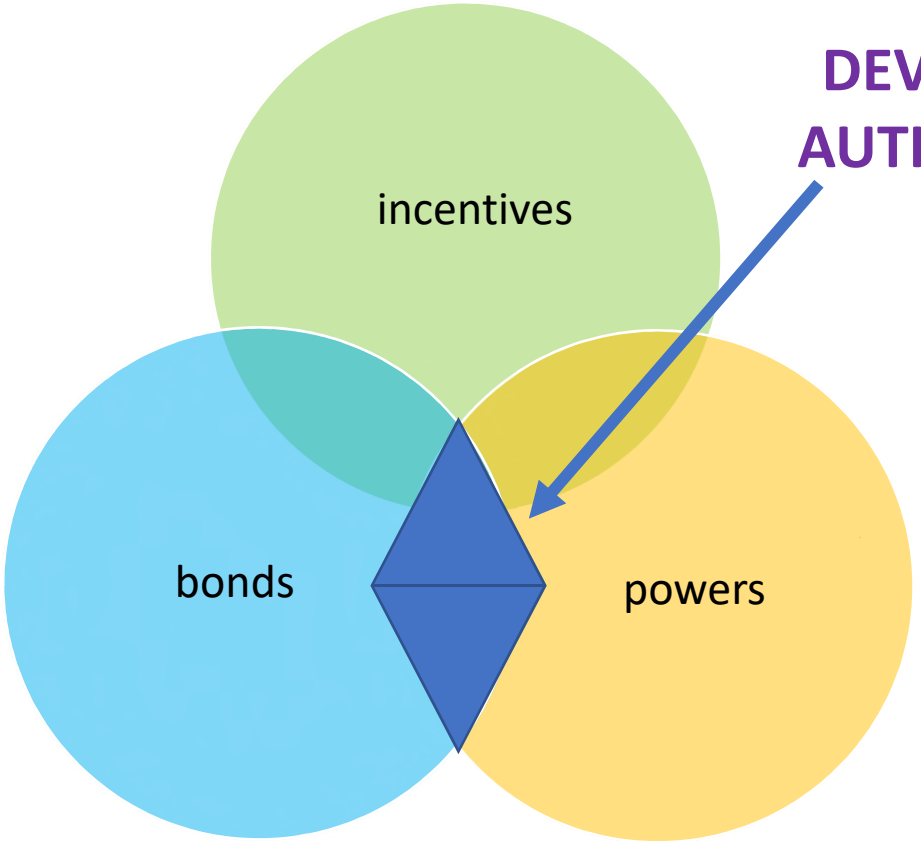
DEVELOPMENT AUTHORITIES AND DDAs ARE "CREATURES OF THE STATE" THEY ARE NOT CREATED BY THE CITY OR COUNTY UNDER "HOME RULE"



A GOOD FOUNDATION PRODUCES GOOD RESULTS



DEVELOPMENT AUTHORITY/DDA

THE ONLY PLACE IT ALL COMES TOGETHER.

POLICY REASONS WHY WE HAVE AUTHORITIES

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PROTECT LOCAL GOVERNMENT

THE CITY OR COUNTY IS NOT LIABLE FOR THE AUTHORITY'S DEBTS OR CONTRACTS.

No bonds or other obligations of and no indebtedness incurred by any authority shall constitute an indebtedness or obligation of the State of Georgia or of any county, municipal corporation, or political subdivision thereof, nor shall any act of any authority in any manner constitute or result in the creation of n indebtedness of this state or of ny such county, municipal corporation, or political subdivision.

O.C.G.A. Sec. 36-62-10

Note: A few LCAs require the local government to impose millage to repay bonds issued by its Constitutional development authority. Always check the LCA.

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"Local government backing of an Authority's bonds is possible using a 'contract revenue bond'. This involves an intergovernmental agreement between the Authority and its local government. Doing this is optional and takes formal action by both parties."

PROTECT LOCAL GOVERNMENT

MEMBERS OF AUTHORITIES ARE APPOINTED, NOT ELECTED. THEY BUFFER THE ELECTED OFFICIALS FROM TEMPORARY POLITICAL PRESSURE.

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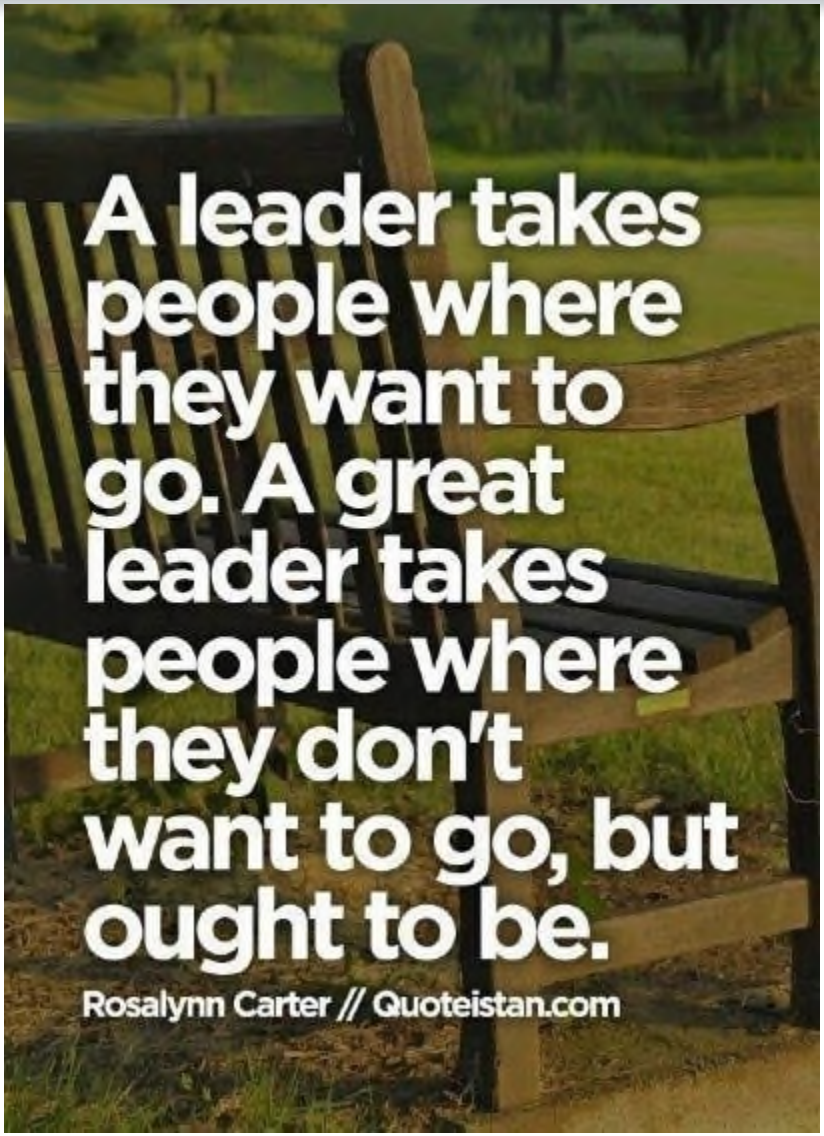
PROTECT LOCAL GOVERNMENT

MEMBERS OF AUTHORITIES ARE APPOINTED, NOT ELECTED. THEY BUFFER THE ELECTED OFFICIALS FROM TEMPORARY POLITICAL PRESSURE.

"Board members of authorities don't serve at the pleasure of the appointing local government. If they did, this buffering would suffer."

BECOME EXPERTS

- THE AUTHORITY BOARD IS LIKE A "SUBJECT MATTER EXPERT"
- THE SUBJECT IS ECONOMIC DEVELOPMENT.



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AUTHORITIES AND INCENTIVES

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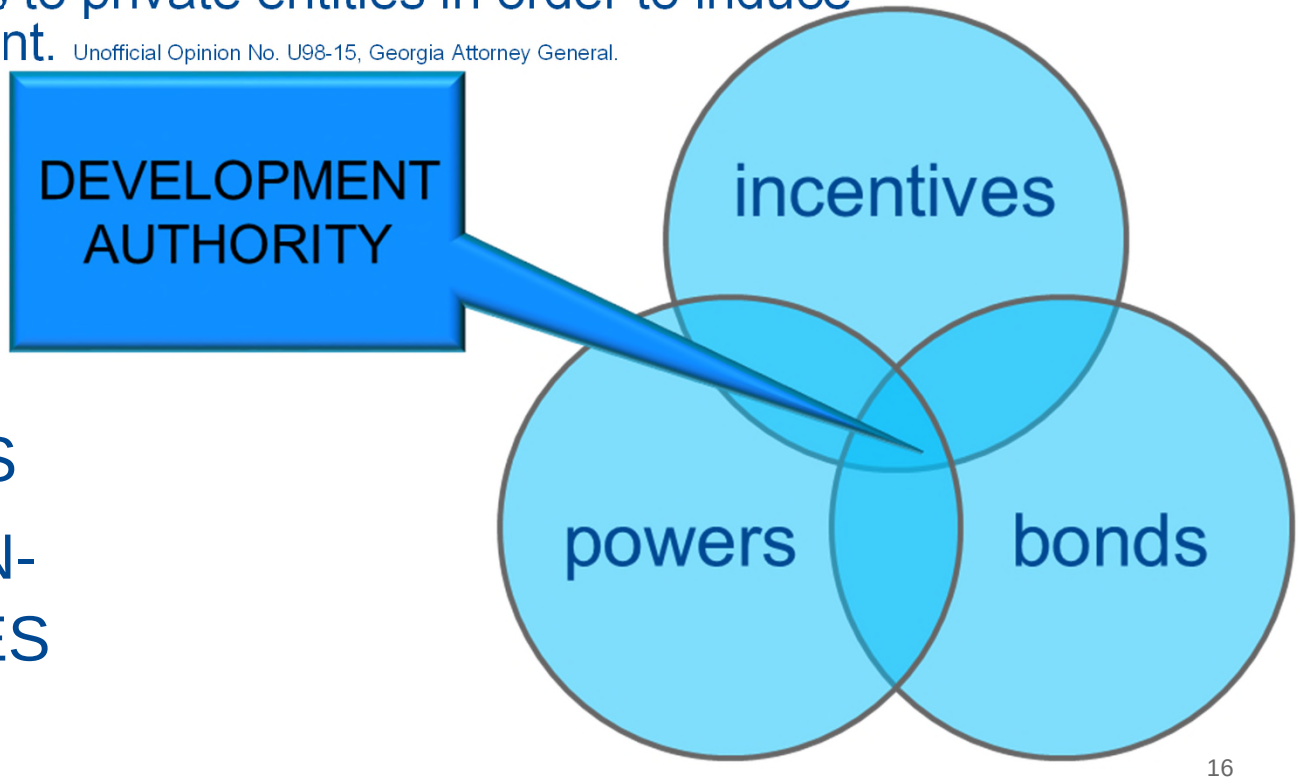
IF GEORGIA DID NOT HAVE DEVELOPMENT AUTHORITIES….

You requested my opinion whether the Georgia Constitution permits "the use of public funds for incentives to directly benefit private corporations to spur economic development"....As you surmised, the prohibition against governmental gratuities has been interpreted to preclude direct grant payments *to private entities in order to induce* economic development. Unofficial Opinion No. U98-15, Georgia Attorney General.

NO DEVELOPMENT AUTHORITY…

NO PROPERTY TAX INCENTIVES

NO CASH OR IN-KIND INCENTIVES



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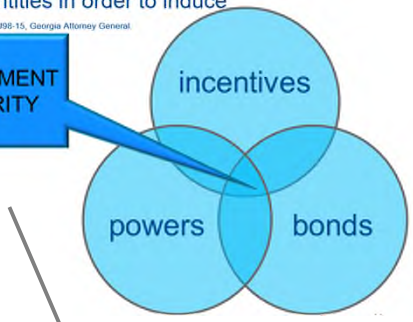


"Translation- You can't give stuff away."

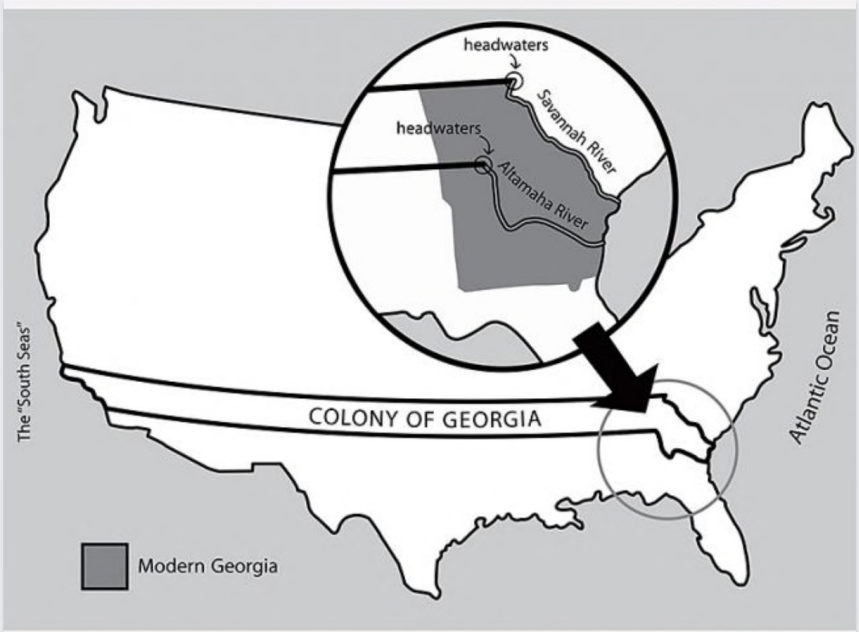
EVERYDAY DEVELOPMENT AUTHORITY ISSUE

Can’t- Confer “gifts or gratuities”

GA CONSTITUTION

Issue: incentives

GEORGIA WAS ONCE THE LARGEST STATE



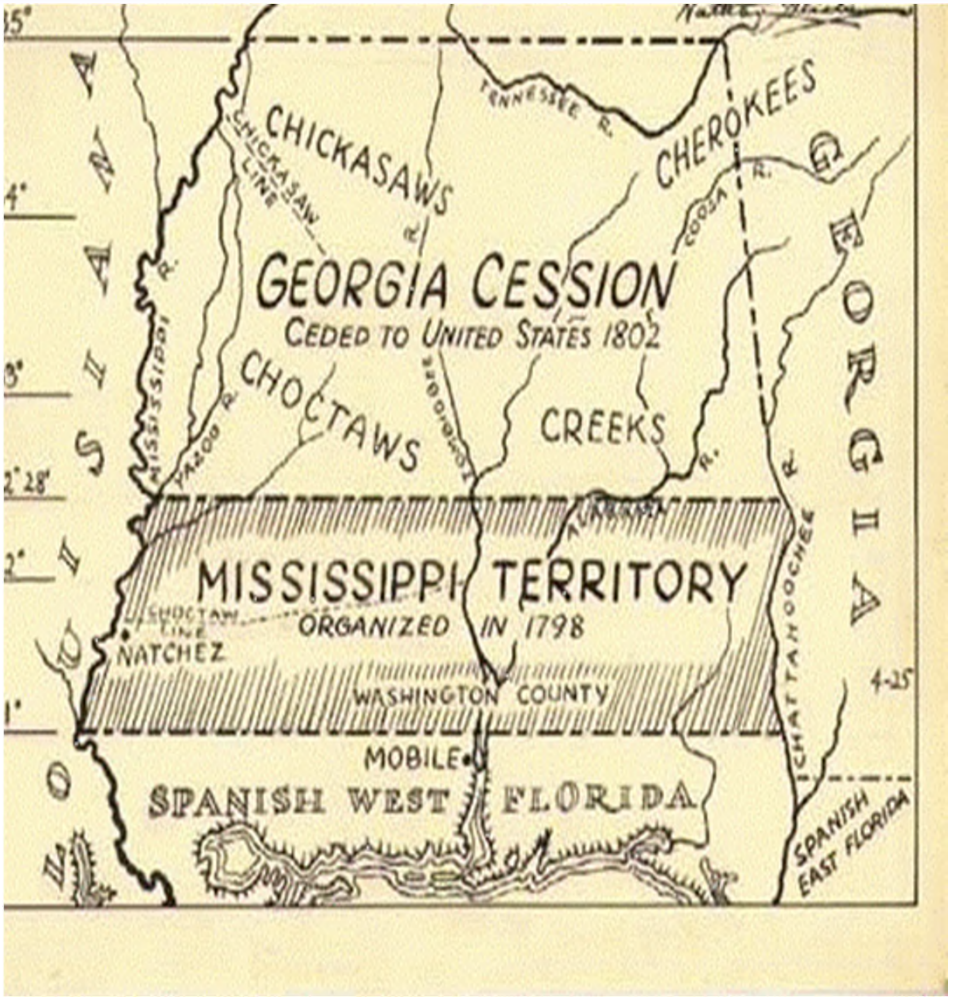
Georgia's original English land grant went westward across the country from the headwaters of the Savannah and Altamaha Rivers.

A later English map of the State of Georgia in the 18th century showing Georgia's borders extending westward to the Mississippi River including the states of Alabama and Mississippi.

map credit: "Vanishing West Georgia" Facebook Group

BUT NOT AFTER SOME "GIFTS OR GRATUITIES" WERE MADE

"The Yazoo land controversy was a massive, real estate fraud perpetrated, in the mid-1790s, by Georgia governor George Mathews and the Georgia General Assembly. Georgia politicians sold large tracts of territory in the Yazoo lands, in what are now portions of the present-day states of Alabama and Mississippi, to political insiders at very low prices in 1794….In the landmark decision in Fletcher v. Peck (1810), the [U.S. Supreme] Court ruled that the contracts were binding and the state could not retroactively invalidate the earlier land sales." Source: Wikipedia



Source: alabamapioneers.com

FROM “FORGIVABLE LOANS” TO REBA & ONEGEORGIA

Forgivable Loans

1995: ATTORNEY GENERAL RULED THE STATE’S “FORGIVABLE LOAN” PROGRAM UNCONSTITUTIONAL

“The forgiveness of loans made under the incentive loan program is clearly outside the scope of the legal powers of GHFA. Under the Constitution, the granting of any donation or gratuity or the forgiveness of any debt or obligation owing to the public is prohibited. Ga. Const. 1983, Art. III, Sec. VI, Para. VI (a)” 1995 Ga. Op. Atty. Gen. 55 (April 28, 1995).

State Grants

ONEGEORGIA AND REBA PROGRAMS WERE RESPONSE MADE TO “KEEP GEORGIA IN THE GAME” AND PERMIT GRANTS FOR PROSPECTS

concepts taken from bond financing: inducement, finding of equivalent public benefit and no “gratuity”

Communities

BUT- PROHIBITION OF “GIFTS AND GRATUITIES” APPLIES TO ALL INCENTIVES AND ALL AUTHORITIES

“This provision of the Constitution applies to the operations of public authorities…It has been held that the forgiveness of a loan operates as a gift to the debtor/donee.” 1995 Ga. Op. Atty. Gen. 55 (April 28, 1995).

YOU CAN'T- "GIVE STUFF AWAY"
BUT YOU CAN- MAKE A BARGAIN

We'll talk about "but for" tomorrow.

IT’S IMPORTANT TO HAVE AN MOU

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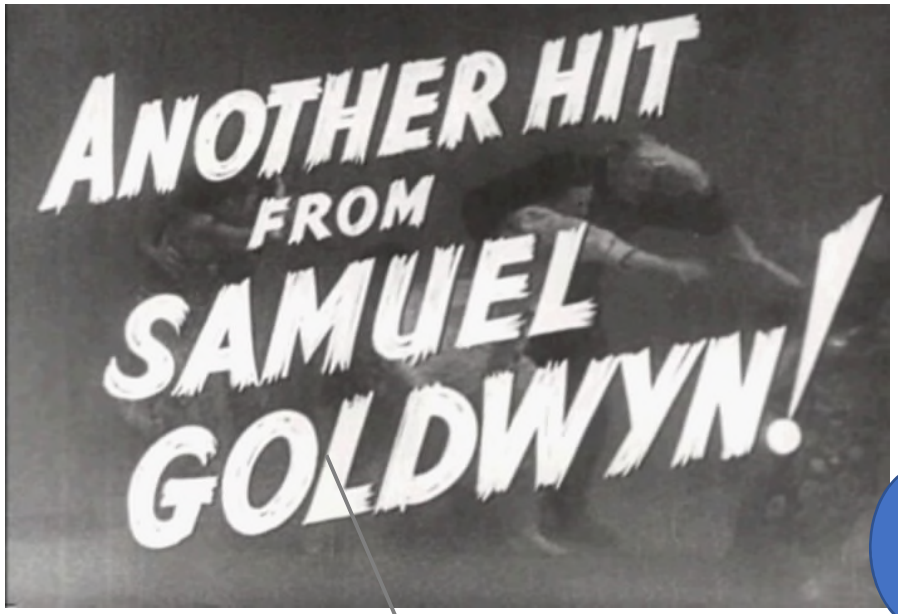


An MOU is how you document and enforce the bargain that you made. Like Samuel Goldwyn said, “A verbal contract isn’t worth the paper it’s written on.”

EVERY PROJECT NEEDS AN MOU BETWEEN THE DA/DDA AND THE PROSPECT/DEVELOPER AND/OR OPERATOR

WALB NEWS 10 WATCH LIVE NEWS WEATHER CORONAVIRUS HEROES AMONG US

NEWS

New hotel, data center coming to downtown Albany

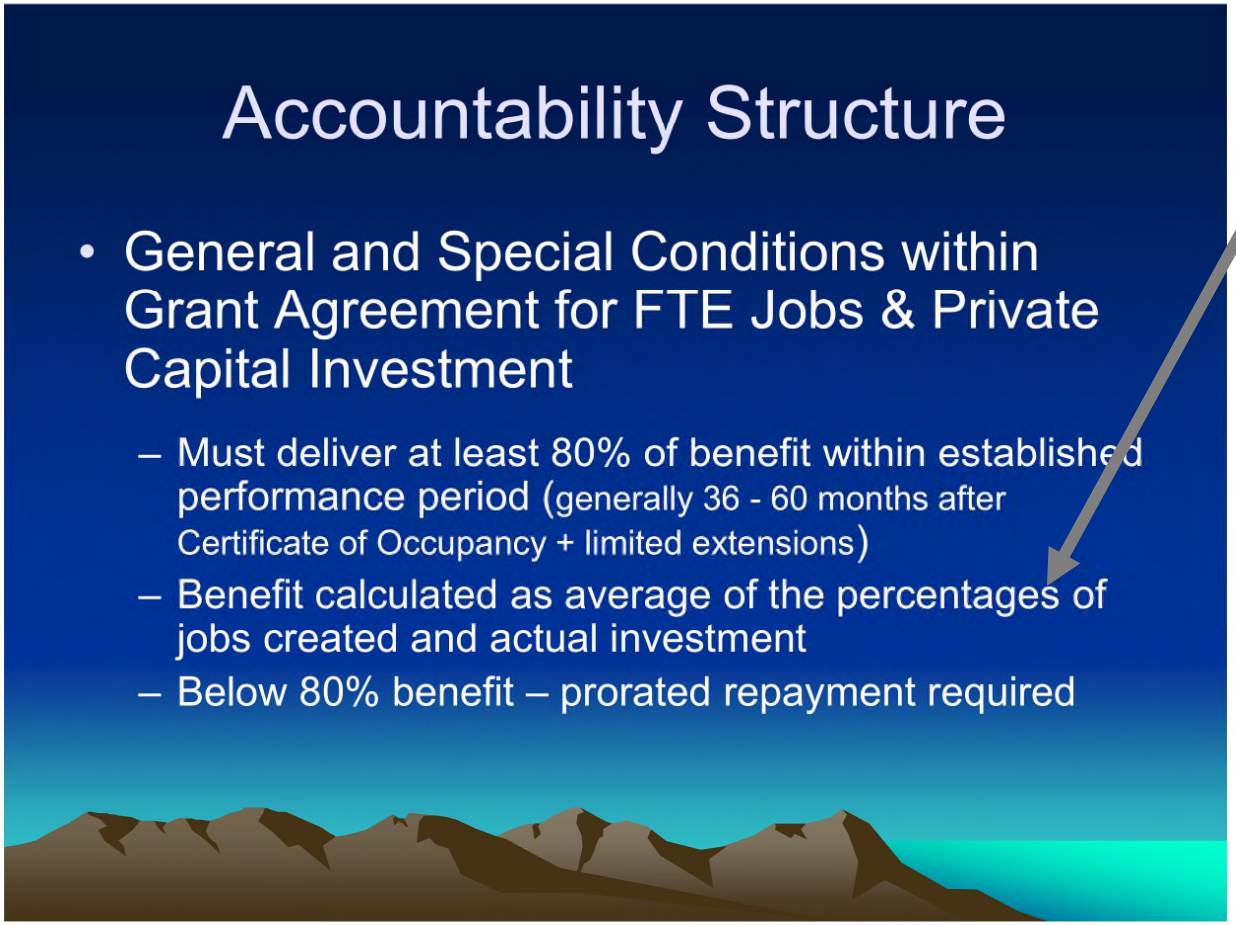
By Jordan Barela | April 8, 2019 at 10:36 AM EDT - Updated April 8 at 11:36 AM

ALBANY, GA (WALB) - An over $15 million project to acquire a historic six-story building is set to bring a number of new jobs to Albany, according to officials.

The Albany Downtown Development Authority (DDA) voted Monday to adopt a redevelopment plan of the former Water, Gas, and Light Commission building, which for half a century was one of the finest hotels in the South, the Hotel Gordon.

- AN MOU IS A "MEMORANDUM OF UNDERSTANDING"
- A/K/A Development Agreement, Project Agreement, etc.
- It is the "Deal Document"
- IT IS TYPICALLY A BINDING CONTRACT.
  - SOMETIMES PRECEDED BY A NON-BINDING LETTER OF INTENT (LOI)
    - or maybe just an "offer letter"
- MOU IS A PRELIMINARY DOCUMENT THAT WILL BE FOLLOWED BY DEFINITIVE DOCUMENTS; e.g., BOND DOCUMENTS

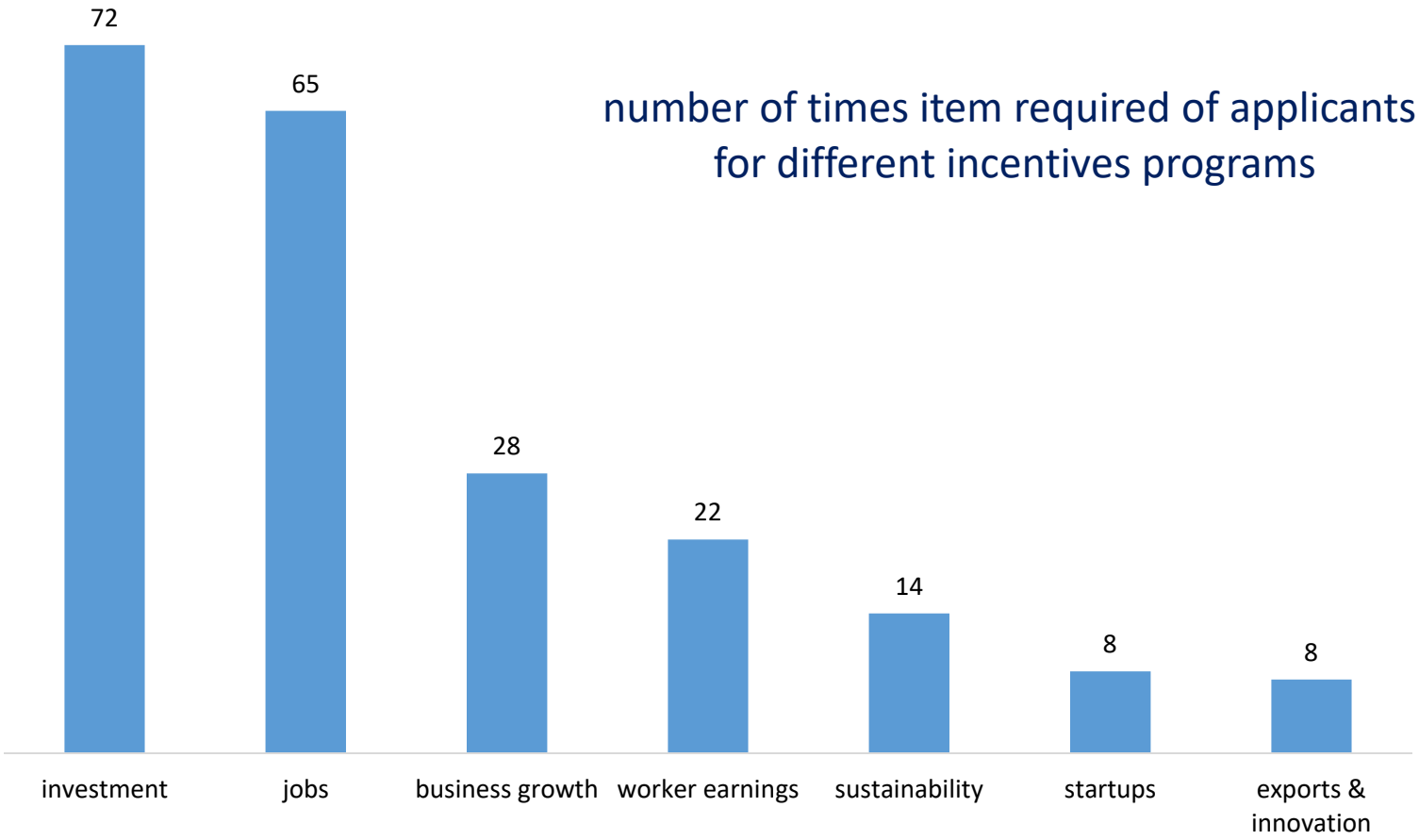
THE MOU CONTAINS THE BARGAIN



Source: DCA

- When there is a state grant, these are the public benefits that the State is bargaining for.
- What is the community bargaining for?
- It can be whatever is important to it that the Company will agree to.
  - Example- In light of some recent long term, 100% abatements, some communities are considering removing investment from the clawback formula- making it 100% jobs. Rationale- What significance is the investment if no taxes are being paid on it?

WHAT SOME OTHER COMMUNITIES ARE REQUIRING AS GOALS



Data Source: CREC; goal chart based on interpolation- data estimated
Data Visualization: Dan McRae

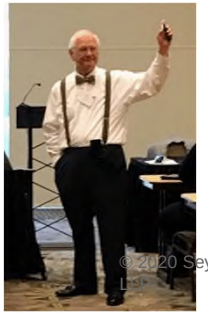
GOOD GOALS- A “GOT TO HAVE”

You have to make a good bargain with your prospect or developer. In order to do that, you have to balance incentives with goals. What is the public benefit that your community needs?

TRENDING- profit sharing

- DEVELOPMENT AUTHORITIES/DDAs CAN EARN FEES FROM TRANSACTIONS SUCH AS BOND ISSUES
  - WHEN BOND ISSUES INVOLVE PROPERTY TAX SAVINGS
    - TREND AMONG CITYWIDE DEVELOPMENT AUTHORITIES AND DDAs: “profit sharing”

“Most often found with key projects given long-term, deep-discount tax savings.”



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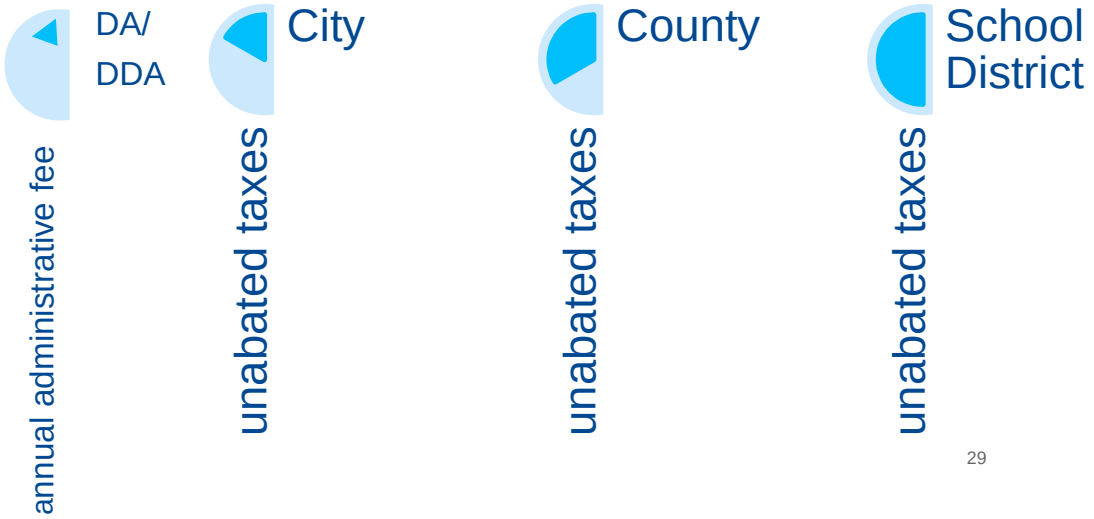

NO INCENTIVES COULD MEAN NO PIE TO DIVIDE

INCENTIVES- HOW TO

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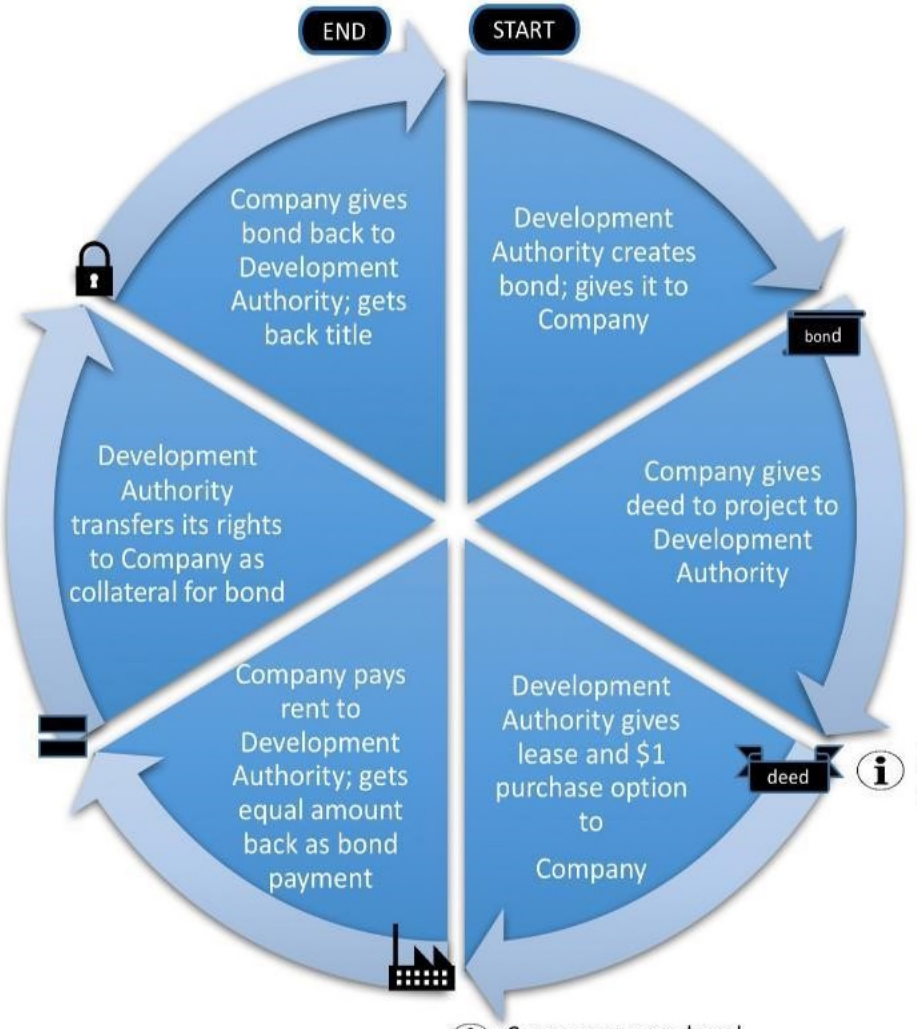
“BONDS FOR TITLE”-

THAT’S HOW YOU DELIVER ON PROPERTY TAX SAVINGS AND CASH AND IN-KIND INCENTIVES

It's not just about property tax "abatement." Cash and in-kind incentives also flow through the development authority.

The lease is the conduit for the incentives- abatement, cash, in-kind.



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PROPERTY TAX SAVINGS
THERE ARE TWO BASIC STRUCTURES

LEASEHOLD VALUATION

USUFRUCT

FIGURING OUT HOW "ABATEMENT" WORKS

THE TOTALITY OF THE INTEREST IN PROPERTY HAS BEEN CALLED THE "BUNDLE OF STICKS"

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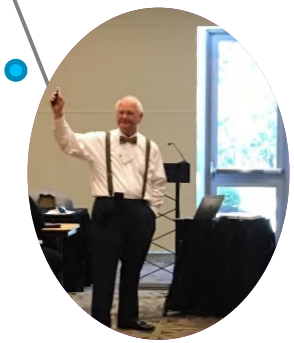
LEASEHOLD VALUATION

A LEASE SEPARATES THE BUNDLE INTO TWO SEPARATE, AND DIFFERENT, INTERESTS IN THE PROPERTY

THE "FEE"
(LEGAL TITLE; LESSOR'S INTEREST)

ESTATE FOR YEARS
(LESSEE'S INTEREST)

Not taxed when the lessor is a development authority.

Make the value in each year match the year's taxability percentage.

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USUFRUCT

THE "FEE"
(LEGAL TITLE; LESSOR'S INTEREST)

THE LEASE DOES NOT SEPARATE THE BUNDLE

a simple contractual right to possess and enjoy the use of the project

USUFRUCT
(LESSEE'S INTEREST)

Not taxed when the lessor is a development authority.

No tax because no property interest to tax. But contract payments can be required (PILOTs).

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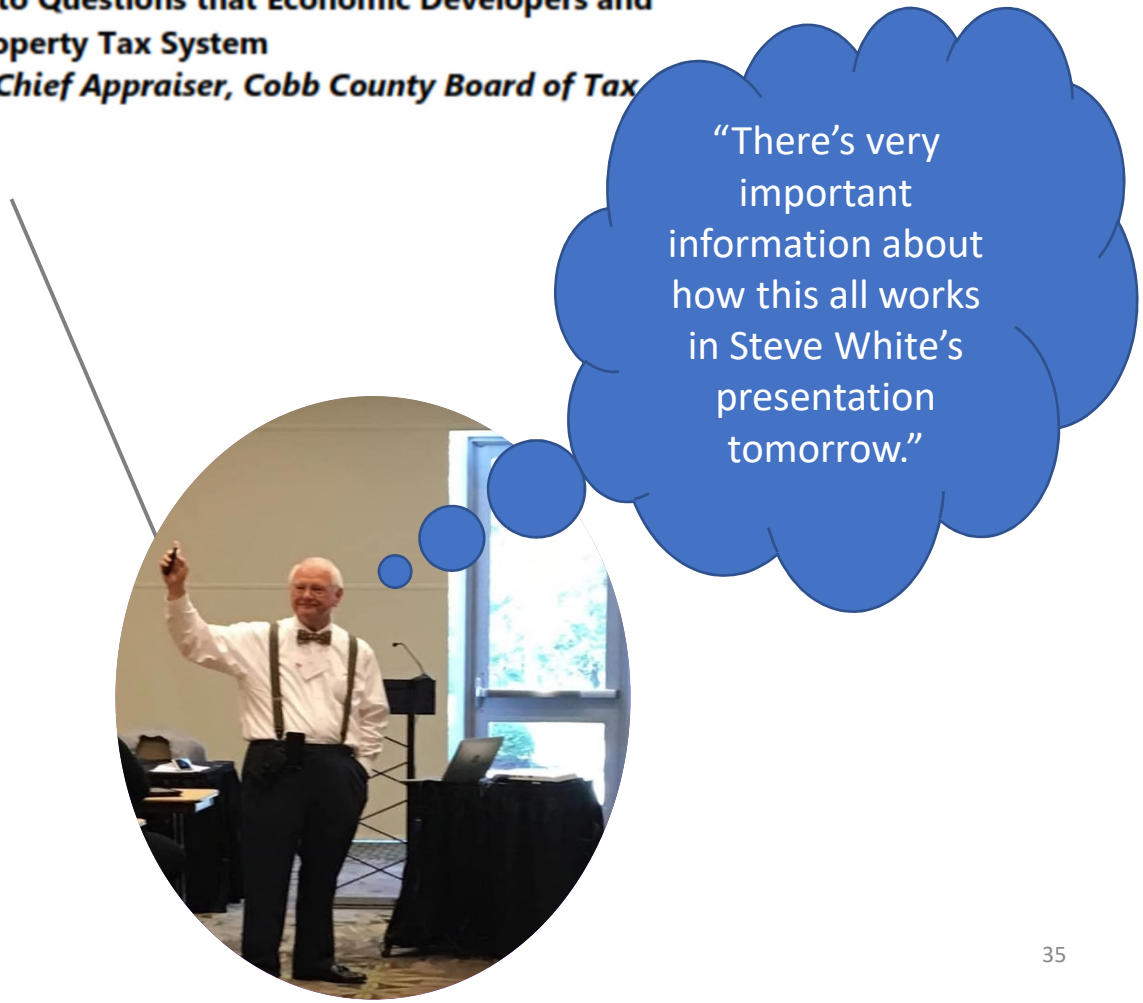
INFORMATION, PLEASE

10:15-10:45 **Ask the Chief! The Answers to Questions that Economic Developers and Prospects Ask About the Property Tax System**
Stephen D. White, Director/Chief Appraiser, Cobb County Board of Tax



THE GOVERNANCE OF DEVELOPMENT AUTHORITIES

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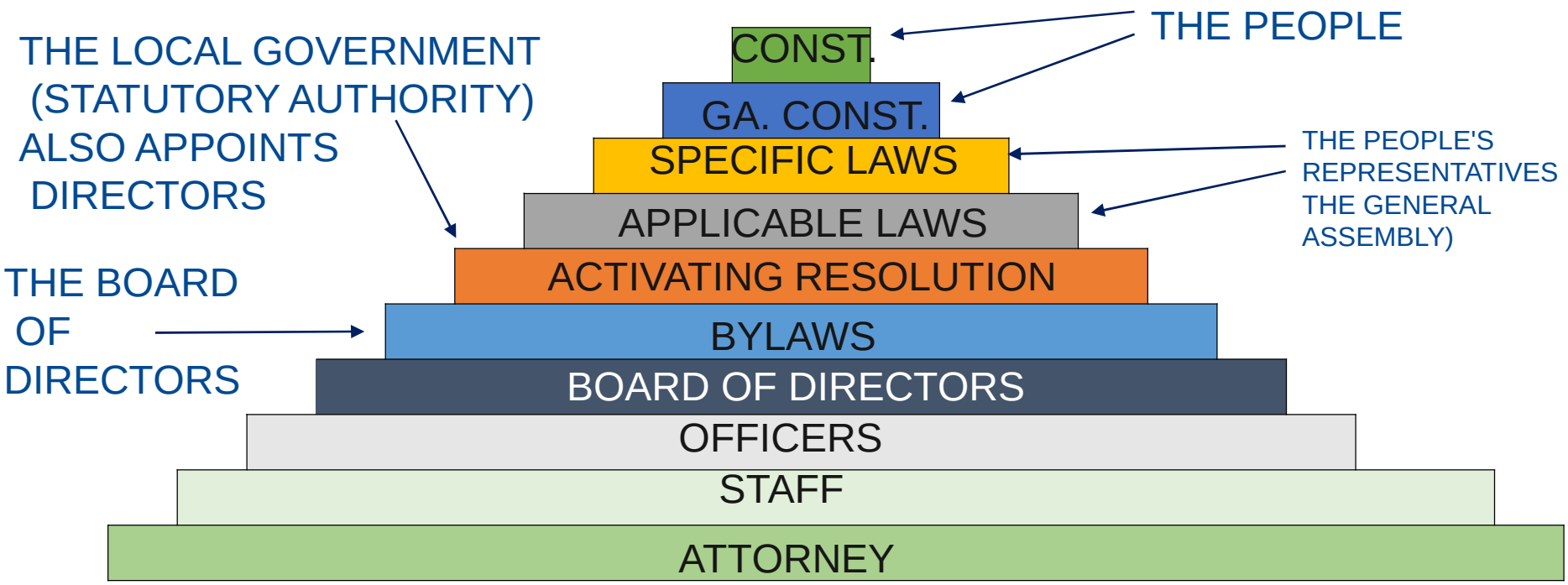
We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.



THE HIERARCHY OF A DEVELOPMENT AUTHORITY

MOST "IN CHARGE" AT THE TOP

LEAST "IN CHARGE" AT THE BOTTOM

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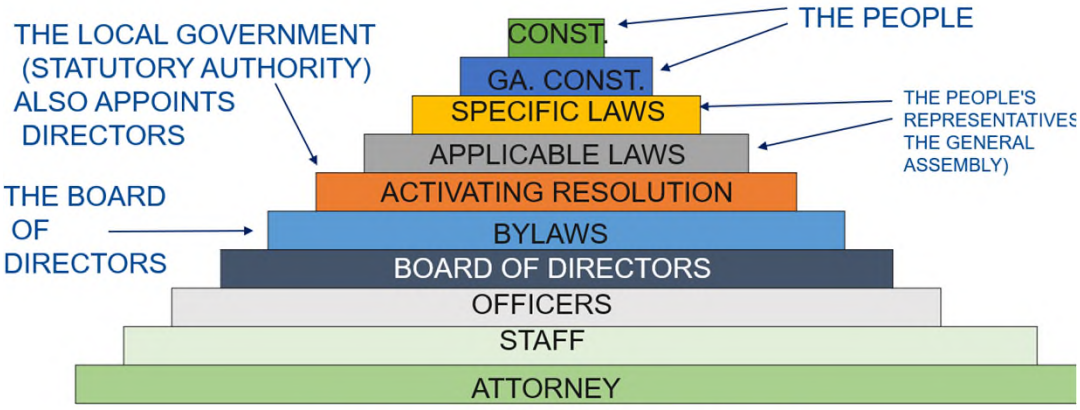
DON'T FORGET THE COURT SYSTEM

ESPECIALLY THE SUPREME COURT AND THE COURT OF APPEALS



THE HIERARCHY OF A DEVELOPMENT AUTHORITY

MOST "IN CHARGE" AT THE TOP

LEAST "IN CHARGE" AT THE BOTTOM

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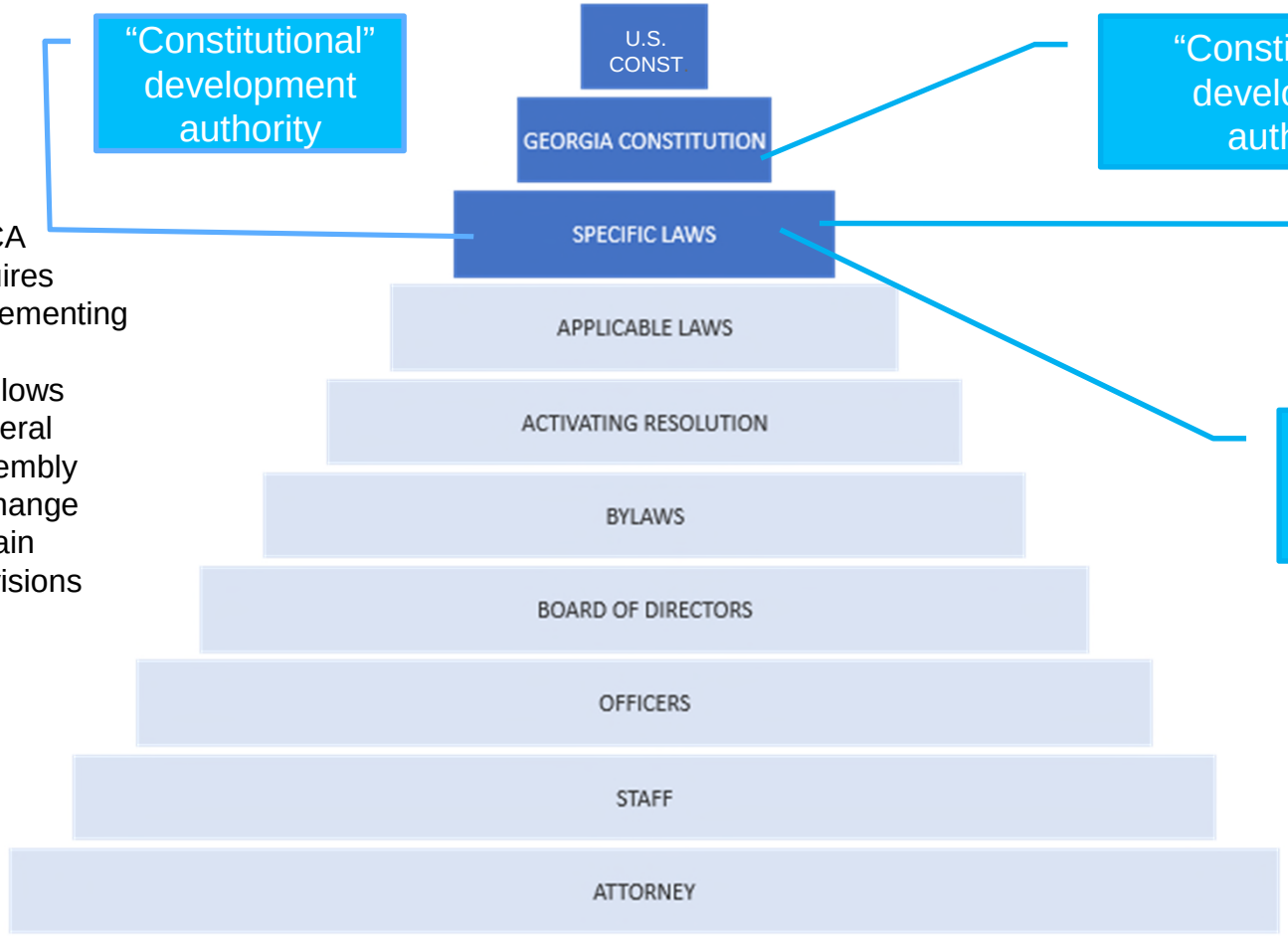
WHERE TO FIND THE LAW FOR YOUR AUTHORITY



"Constitutional" development authority

if LCA requires implementing act or allows General Assembly to change certain provisions

"Constitutional" development authority

"statutory" development authority

"local act" authority

no local or special law in any case for which provision has been made by an existing general law

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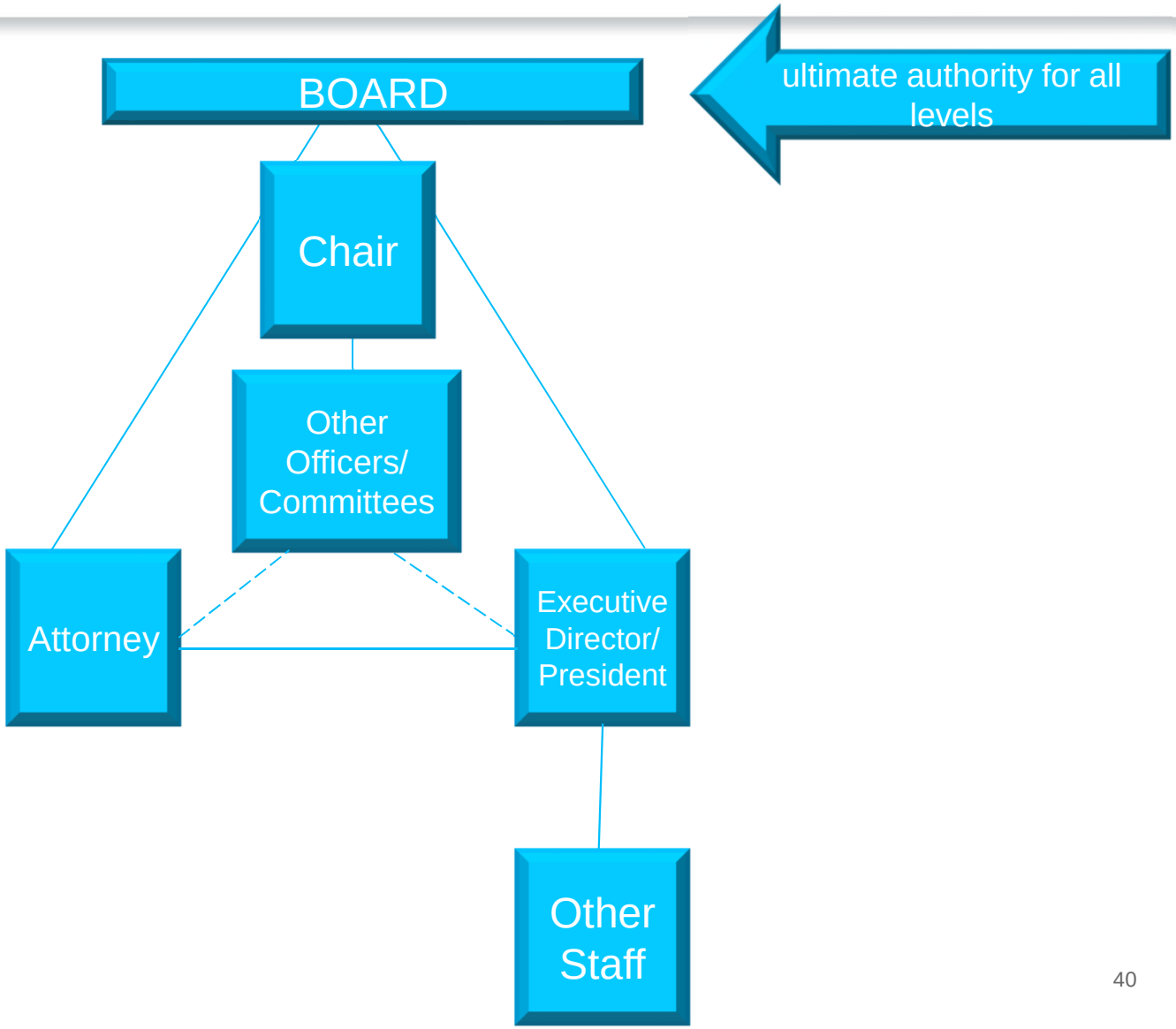
SPECIMEN OPERATIONAL FLOWCHART



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THE LEVELS OF AUTHORITY

BOARD	BYLAWS	OFFICERS
• Statutory DA: 7-9 members; set by local government (can include 1 local government member); term (after first appointments) 4 years; majority of whole board to pass resolution • Statutory DDA: 7 members (can include 1 local government member); term (after first appointments) 4 years; majority of quorum to pass resolution except issuing debt or making project determination • Statutory JDA: all set by concurrent activating resolutions of local governments • Constitutional authority- all set by LCA	• Adopted by board • Best practice: include only matters not dictated by governing law, such as officer terms, calling special meetings, meeting schedule • Directors must comply with procedures in bylaws such as notice required before amending bylaws	• Statutory DA, JDA and DDA: Chair and Vice Chair (both members), Secretary and Treasurer or Secretary-Treasurer (membership optional) • Constitutional authority- all per LCA

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THE LEVELS OF AUTHORITY

BOARD

- **Statutory DA: majority of whole board to pass resolution**

Presiding officers and Authority
Counsel of city/county authorities must be alert for this issue.
Note- DDA's have different rules.

The authority's rules say that even when fewer than all seven members of the board are present at a meeting, an item must get the majority of the full seven- member board — at least four votes — to pass.

Floor & Decor will get another shot before the authority at a special called meeting Nov. 5.

Source: Marietta Daily Journal

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THE LEVELS OF AUTHORITY

BOARD

- **Statutory DA: can include 1 local government member**

Elected person on the board- Good idea? Bad idea?
Regardless, the situation of an elected person's
holding two positions is not unethical or a conflict.
Why? Because the law permits it.
A transaction, on the other hand, can be either, or both.

Councilwoman Farmer told the MDJ she voted against the change because having a council member on the development authority as a voting director is an "ethical violation."

"We don't need a member from the council on the board of directors for DAPS (Development Authority of Powder Springs)," Farmer said. "I feel like they would be influenced too much by the council and by what we want and I feel like (development authority directors) need to make their own decisions."

Farmer said she didn't have an issue with increasing the number of development authority directors to nine, only opposing the part of the code change allowing one of the directors to be a council member.

Source: Marietta Daily Journal

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THE LEVELS OF AUTHORITY

BOARD

- **"(a) The directors shall be taxpayers residing in the county or municipal corporation for which the authority is created, …."**
- **O.C.G.A Sec. 36-62-5**
- **(statutory city/county development authorities)**
-

In another community, the County Board of Commissioners voted to remove the "newly-appointed Development Authority Chair … because he does not own a home

[The Chair] told the .. News he lives in [the County] and that he does pay county taxes through his business."

This is not an uncommon issue. The DAL does not contain a definition of "residing" or of "taxpayer."

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STATUTORY DDA
DIRECTOR QUALIFICATIONS

A DIRECTOR OF A STATUTORY DDA HAS TO HAVE (AND MAINTAIN AT ALL TIMES) ONE OF THESE QUALIFICATIONS-

1. City resident
2. Resident of City's County and own or operate a business in the downtown development area
3. Qualified under both 1 and 2
4. Member of City's governing body

(at least 4 of the Directors in the above categories, "shall be persons who, in the judgment of the governing body of the municipal corporation", have or represent a party who has an economic interest in the redevelopment and revitalization of the downtown development area)

5. Resident of Georgia and own a business in the downtown development area (only 1 member)

MULTIJURISDICTIONAL AUTHORITIES

"We'll talk about joint development authorities and regional industrial development authorities tomorrow."

CONCLUSION

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MORE INFORMATION

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QUESTIONS?

If you have any questions or comments on this presentation, please do not hesitate to let me know.

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